CF0000057863

CM 1615 /94 Division Bench (Criminal)

XII-188/(Jail)
C.J.P.R.—5,000-9-81

ST No 490/93

(2)

High Court of Madhya Pradesh
JABALPUR
29 NOV 1994
Regd. No. 174
BLB 29.11.94
Recpt Clerk
High Court, Jabalpur

APPEAL OF PRISONER

No. 469 Name भान सिंह

Father's name राम सिंह गोंड

Residence नवरी, पोड़ी, सरगुजा Age 30

Sentenced to आजीवन कारावास on 12.8.94

Under section 302 by श्री आर० पी० तिर्की अपर सत्र न्यायाधीश मनेन्द्रगढ़

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 12-8-94

2 Date of which copy received 8.10.94

3 Date on which Appeal sent 10.10.94

4 Whether the prisoner wishes to be represented or not – Yes/No. हाँ

No. 83 Name भान सिंह गोंड रामसिंह

Continued in उपजेल मनेन्द्रगढ़ Register No. 15.493

No. 1719 dated 10.10.94 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE / अधिकारी म.प्र.

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent-Central/District Sub-Jail
Superintendent
Sub-Jail, Balrampur

Date of receipt in C. J. M.'S Office 17-10-94

Date of receipt of record to accompany 17-11-94

Memo of Appeal of the Appeliate Court. माननीय उच्च न्यायालय म.प्र. जबलपुर

No. Dated 198

Forwarded to the उच्च न्यायालय म.प्र. जबलपुर

C.J.Magistrate 17.11.94
सहायक कलेक्टर
सरगुजा, अम्बिकापुर म.प्र.

Date of receipt in Appliate Court

(P.T.O.)

(5)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... Criminal Appeal 1615/94 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI LC Bhadoo, J.
& HON'BLE SHRI VK Shrivastava,J.

09.12.2005

Shri RK Jain, counsel for the appellant.

Shri UNS Deo, Additional Public Prosecutor with Shri Ravindra Agrawal, Panel lawyer for the State.

Oral judgment.

1) This appeal has been directed against the judgment dated 12.08.1994, passed by the Additional Sessions Judge Manendragarh, Dist-Surguja in Sessions Trial No.490/93, whereby learned Additional Sessions Judge after holding the accused / appellant guilty for the commission of offence under Section 302 of the IPC, convicted and sentenced him to undergo imprisonment for life.

2) The case of the prosecution in brief is that PW4 - Lalji gave FIR - Ex.P/3 in the Police Station Podi to the effect that to day at about 6 am Balligond came to his house and informed his son - Amar Singh that Ramsai had been murdered. When he came to his house, his son gave him the said information. Therefore, immediately he went to the house of Ramsai and saw that body of Ramsai was lying on

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the cot in the courtyard of the house. There were injuries on the neck of the deceased, caused by some sharp edged weapon like spade or axe. Villagers Devisingh, Sonsai, and Kalyan also came there. He enquired from the wife of the deceased - Sonkuwar that who had murdered her husband; but she did not disclose name of anybody. She told that, she along with her husband went for sleep in the court yard after taking dinner. When she woke up at 4 am, she saw the body of her husband in a pool of blood and she raised cries; upon which her son-in-law and daughter came. They have sent him to lodge the report. On receiving this report, Station House Officer left for the scene of occurrence and prepared Panchanama - Ex.P/1 of the body. He took into possession, blood stained soil and plain soil under Ex.P/2 from the place of occurrence. While accused / appellant was in the police custody, he gave a memorandum - Ex.P/4 about the place where he kept the tabbal, the weapon of offence. In pursuance of the said information, SHO got recovered the tabbal under Ex.P/5. Postmortem of the body was conducted by Dr.Suresh Tiwari, Assistant Surgeon Manindragarh and he prepared the report - Ex.P/6. He opined that injuries on the neck were caused by a sharp edged weapon and death was homicidal in nature. After completion of the

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investigation, charge - sheet was filed in the Court of Judicial Magistrate First Class, who in turn committed the case to the Sessions Judge Surguja, who made over the case to Additional Sessions Judge Manindragarh.

3) The prosecution in order to prove the charge against the accused / appellant, examined eight witnesses. The statement of the accused / appellant was recorded under Section 313 of the Cr.P.C., in which he has stated that witness is telling a lie because she is a bad character lady. Learned Additional Sessions Judge, after hearing the argument of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para - 1 of this judgment.

4) We have heard learned counsel for the appellant Shri RK Jain and Shri UNS Deo, Additional Public Prosecutor with Shri Ravindra Agrawal, Panel lawyer for the State.

5) The fact of the homicidal nature of death has not been disputed by learned counsel for the appellant. Apart from that, from

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the evidence of PW2 - Kausalya Bai, the eyewitness and from medical evidence of PW7 - Dr Suresh Tiwari, in which he stated that he conducted the postmortem and there was a cut injury on the neck in a length of 25 cm. It was in the centre of the neck, as a result of which the skin, muscles and nerves of the neck were cut and on account of that injury, the 3rd and 4th cervical bones were also cut. The injury was caused by a sharp edged weapon and the death was due to shock as a result of excessive bleeding of the injuries. In ordinary course of nature, the injuries were sufficient to cause the death. Therefore, in view of the above evidence of Dr.Suresh Tiwari, postmortem report Ex.P/6 and the evidence of PW2- Kausalya Bai, it is established that the death of Ramsai was homicidal in nature.

6) Now, coming to the question of involvement of the accused / appellant, the whole case of the prosecution rests upon the solitary eyewitness namely Kausalya Bai - PW2, who is none else than wife of the accused / appellant and daughter of the deceased. Now, the question before the Court is as to whether the evidence of this witness is sterling worth and inspire the confidence of the Court, so as to base the conviction on the evidence of this witness. It is an

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admitted position that this witness along with the accused were residing with the deceased, father of this witness. She has stated that on the fateful night, her mother and father were sleeping in the courtyard. She and her husband, the accused / appellant were sleeping in the rooms. In the night, she saw that the accused was sitting near the cot of her father; when she asked from him as to what he is doing, upon which he assaulted her father with an axe and thereafter he came near to her and asked her not to disclose this fact to any one. She went for sleep and she woke up after hearing the cries of her mother. The villagers had collected there, but she did not disclose the fact of witnessing the crime. When the accused went to attend the call of nature, she disclosed the fact to villagers Dadulal and Mangalsingh.

7) Learned counsel for the accused / appellant vehemently argued that reliance cannot be placed on the evidence of this witness for the reason that when she witnessed the crime, why she did not disclose the fact to her mother or other persons. Therefore, in these circumstances, her evidence is un-natural. Kausalya Bai has stated that when only she and her mother were there, at that time, she

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apprised the fact of witnessing the crime to her. When the accused / appellant went to attend the call of nature, she apprised the fact of witnessing the incident to Dadulal and Mangal Singh.

8) Now question remains whether the explanation given by this witness can be believed or not. We have perused the judgment of the trial Court. The explanation given by the witness is plausible for the reason that this witness belongs to the tribal community and residing in rural area, particularly in which the offence was committed. It is a rare sight where false implications are noticed and as mentioned by the trial Court that there was no reason before this witness to implicate her husband in a false case. It is a very difficult situation and one can hardly believe this when father of the lady has been murdered then why she should implicate her husband in a false case in order to destroy the whole family because he was the bread earner in the family. Therefore, the explanation given by this witness appears to be correct because the accused / appellant asked her not to disclose this fact, being frightened by seeing the murder of her father, she could not dare to disclose this fact. PW1 - Sonkuwar, wife of the deceased and mother of the witness has stated that her

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husband had asked the accused to bring wood from the forest for use during the rainy season, upon which the accused / appellant was not happy and he was keeping grudge in his mind.

9) Learned counsel further argued that PW2 - Kausalya Bai in her evidence has stated that on the fateful night, it was dark; therefore, there was no occasion for PW2 Kausalya Bai to see the accused. However, she has clearly stated that when she saw the accused was sitting near the cot of her father, she asked him as to what he is doing, upon which he attacked her father with the axe and asked her not to disclose this fact to anyone. Therefore, in view of this evidence, the question of identity cannot be doubted.

10) In this connection, if we look into the evidence of PW4 - Lalji, who made the report to the police about the incident, in para - 3, he has categorically stated that when police came and started enquiry from the accused, he said that he has not murdered Ramsai, at that time, PW2 - Kausalya Bai wife of the accused had stated that he is the person who has murdered her father, and she brought an axe, the weapon of offence and said that by this weapon the accused attacked

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her father. Thereafter police took the accused along with the axe to the police station. Therefore, he is an independent witness and in the cross examination, nothing has been elicited as to why this witness will try to implicate the accused / appellant in a false case and why the above evidence of this witness should be disbelieved.

11) For the foregoing reasons, we are of the considered opinion that the reasoning assigned by the trial Court is based on the legal principle and the evidence of PW2 - Kausalya bai inspires confidence of the Court.

12) In the result, we do not find any substance in this appeal. Therefore, it is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

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